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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/767,398	01/28/2004	Joseph J. Settelmayer	YAK 382	2860
23581	7590	10/19/2006	EXAMINER	
KOLISCH HARTWELL, P.C. 200 PACIFIC BUILDING 520 SW YAMHILL STREET PORTLAND, OR 97204			VANTERPOOL, LESTER L	
			ART UNIT	PAPER NUMBER
			3782	

DATE MAILED: 10/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.		Applicant(s)	
	10/767,398		SETTELMAYER ET AL.	
	Examiner		Art Unit	
	Lester L. Vanterpool		3782	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on July 31, 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14, 17 and 18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14, 17 and 18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>September 21, 2006</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1, 17 & 18 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 – 3, 6 & 23 of U.S. Patent No. 6918521 B2. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1 – 3, 6 & 23 of U.S. Patent Number discloses 6918521 B2 entitled the car top carrier with quick release clamping device claims the same structure such as the box, having at least one clamp device comprising of the jaw device and the cam lever. Claims 1, 17 & 18 of application number 10 / 767398 recite the same box, having a clamp device comprising of the cam lever.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1 – 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Envall (U. S. Patent number 5582313) in view of Wooten, Jr. (U.S. Patent Number 3008177). Envall discloses the box having the lid (1 & 2) and the bottom (3 & 4) (See Figures 1 & 2); the clamp device (29) configured to attach the bottom of the box to the pair of crossbars on top of the car (column 4, line 62 – 66); one or more hinge devices (8) releaseably connecting the lid (1 & 2) to the bottom (3 & 4) (See Figure 2), wherein, each hinge (8) has the first portion secured to the lid (1 & 2), and the second portion secured to the bottom (3 & 4), the hinge (8) is configured to permit pivotal rotation of the lid (1 & 2) along an edge portion of the bottom (3 & 4) (See Figure 2).

However, Envall does not disclose the release mechanism so that the hinge device can also function as the latch to allow separation of the first and second portions of the hinge device, wherein the hinge device automatically snaps into engagement when the first portion is urged toward the second portion.

Wooten Jr. teaches the release mechanism (16) so that the hinge device (3) can also function as the latch to allow separation of the first and second portions of the

hinge device (3), wherein the hinge device automatically snaps into engagement when the first portion is urged toward the second portion (column 2, line 43 – 48) (See Figures 5 & 3) for the purpose of providing multi-functional capabilities.

It would have been obvious to one having ordinary skill in the art at the time the invention was made make the release mechanism so that the hinge device can also function as the latch to allow separation of the first and second portions of the hinge device, wherein the hinge device automatically snaps into engagement when the first portion is urged toward the second portion as taught by Wooten Jr. in order to enhance the hinge device with multi-functional capabilities.

Regarding claim 2, Envall discloses the invention substantially as claimed. However, Envall does not disclose the one of the first and second portions has the catch, and the other portion has the enlarged structure configured to receipt by the catch.

Wooten Jr., teaches the one of the first and second portions having the catch (See Figure 1), and the other portion having the enlarged structure (6) configured to receipt by the catch (See Figure 3) for the purpose of providing reliability.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the one of the first and second portions having the catch, and the other portion having the enlarged structure configured to receipt by the catch as taught by Wooten Jr., with the car top carrier of Envall in order to enhance reliability.

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5. Claims 3 – 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Envall (U. S. Patent number 5582313) in view of Wooten, Jr. (U.S. Patent Number 3008177) as applied to claim 2 above, and further in view of Zupancic et al., (U.S. Patent Number 6296278). Envall discloses the invention substantially as claimed.

However, Envall does not disclose the catch is spring biased toward the closed position which permits entry of the enlarged structure into the catch but does not allow exit of the enlarge structure from the catch without manipulation.

Zupancic et al., teaches the catch spring (14) biased toward the closed position which permits entry of the enlarge structure (12) into the catch but does not allow exit of the enlarged structure (12) from the catch without manipulation (See Column 6, lines 30 – 44) (See Figures 1 & 5) for the purpose of providing reliability and security.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the catch spring biased toward the closed position which permits entry of the enlarge structure into the catch but does not allow exit of the enlarged structure from the catch without manipulation as taught by Zupancic et al., with the car top carrier of Envall in order to enhance reliability and security.

Regarding claim 4, Envall discloses the invention substantially as claimed. However, Envall does not disclose the catch including the pawl that is spring biased toward the constricted-passage position.

Zupancic et al., teaches the catch (See Figures 1 & 5) including the pawl (13) that is spring biased toward the constricted-passage position (See Figure 1) for the purpose of providing reliability.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the catch include the pawl that is spring biased toward the constricted-passage position as taught by Zupancic et al., with the car top carrier of Envall in order to enhance reliability and security.

Regarding claim 5, Envall discloses the invention substantially as claimed. However, Envall does not disclose the pawl can be pushed aside by the enlarged structure upon entry but not upon exit of the catch.

Zupancic et al., teaches the pawl (13) can be pushed aside (See Column 6, line 43 & 44) by the enlarged structure (12) upon exit but not upon entry of the catch (See Figures 1 & 5).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make pawl capable of being pushed aside by the enlarged structure upon entry but not upon exit of the catch, since it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art. *In re Einstein*, 8 USPQ 167.

6. Claims 6 – 14 & 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Envall (U. S. Patent number 5582313) in view of Wooten, Jr. (U.S. Patent Number

3008177) and Zupancic et al., (U.S. Patent Number 6296278). Envall discloses the box having the lid (1 & 2) and the bottom (3 & 4) (See Figures 1 & 2); the clamp device (29) configured to attach the bottom of the box to a pair of crossbars on top of a car (column 4, line 62 – 66); one or more hinge devices (8) releaseably connecting the lid (1 & 2) to the bottom (3 & 4) (See Figure 2), wherein, each hinge (8) has the first portion secured to the lid (1 & 2), and the second portion secured to the bottom (3 & 4), the hinge (8) is configured to permit pivotal rotation of the lid (1 & 2) along an edge portion of the bottom (3 & 4) (See Figure 2).

However, Envall does not disclose the release mechanism so that the hinge device can also function as the latch to allow separation of the first and second portions of the hinge device, wherein one of the first and second portions has the catch, and the other portion has an enlarge structure configured for receipt by the catch.

Wooten Jr. teaches the release mechanism (16) so that the hinge device (3) can also function as a latch to allow separation of the first and second portions of the hinge device (3) (column 2, line 43 – 48) (See Figures 5 & 3).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the release mechanism so that the hinge device can also function as the latch to allow separation of the first and second portions of the hinge device, wherein one of the first and second portions has the catch, and the other portion has an enlarge structure configured for receipt by the catch as taught by Wooten Jr. in order to enhance the hinge device to be multi-functional.

Furthermore, Envall does not disclose the pawl that is spring biased toward the constricted-passage position and wherein, the pawl can be pushed aside by the enlarge structure upon entry but not upon exit of the catch.

Zupancic et al., teaches the catch (See Figures 1 & 5) including the pawl (13) that is spring biased toward the constricted-passage position (See Figure 1) for the purpose of providing reliability.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the catch include the pawl that is spring biased toward the constricted-passage position as taught by Zupancic et al., with the car top carrier of Envall in order to enhance reliability and security.

Furthermore, Zupancic et al., teaches the pawl (13) can be pushed aside (See Column 6, line 43 & 44) by the enlarged structure (12) upon exit but not upon entry of the catch (See Figures 1 & 5).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make pawl capable of being pushed aside by the enlarged structure upon entry but not upon exit of the catch, since it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art.

In re Einstein, 8 USPQ 167.

Regarding claim 7, Envall discloses the invention substantially as claimed. However, Envall does not disclose the catch is spring biased toward the closed position

which permits entry of the enlarge structure into the catch but does not allow exit of the enlarged structure from the catch without manipulation.

Zupancic et al., teaches the catch is spring (8) biased toward the closed position which permits entry of the enlarge structure (12) into the catch but does not allow exit of the enlarged structure from the catch without manipulation (See Column 6, lines 30 – 44) (See Figures 1 & 5) for the purpose of providing reliability and security.

It would have been obvious to one having ordinary skill in the art at the time invention was made to make the catch is spring biased toward the closed position which permits entry of the enlarge structure into the catch but does not allow exit of the enlarged structure from the catch without manipulation as taught by Zupancic et al., with the car top carrier of Envall in order to enhance reliability and security.

Regarding claim 8, Envall discloses the invention substantially as claimed. However, Envall does not disclose the enlarged structure is substantially spherical so that the hinge device permits the first and second portions to be mounted on various lid and bottom shapes.

Wooten, Jr., teaches the enlarged structure (6) is substantially spherical (See Figures 1 & 3 & 4) so that the hinge device permits the first and second portions to be mounted on various lid and bottom shapes (See Figures 1 & 5) for the purpose of providing multi-functional capabilities.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the enlarged structure is substantially spherical so that the

hinge device permits the first and second portions to be mounted on various lid and bottom shapes as taught by Wooten, Jr. with the car top carrier of Envall in order to enhance multi-functional capabilities.

Regarding claim 9, Envall discloses the invention substantially as claimed. However, Envall does not disclose the catch is provided with the spring that urges the enlarged structure to disengage when the catch is manipulated to the open position.

Zupancic et al., teaches the catch is provided with the spring (8) that urges the enlarged structure (12) to disengage when the catch is manipulated to the open position (See Column 6, lines 30 – 43) (See Figure 1) for the purpose of providing

It would have been obvious to one having ordinary skill in the art at the time invention was made to make the catch provided with the spring that urges the enlarged structure to disengage when the catch is manipulated to the open position as taught by Zupancic et al., with the car top carrier of Envall in order to enhance reliability and security.

Regarding claim 10, Envall discloses the first and second lid supports (16) (See Figure 9), each lid support connecting the lid (1 & 2) to the bottom (3 & 4) (See Column 4, lines 56 – 58).

Regarding claim 11, Envall discloses each lid includes the slider mounted on the spring, and the cam slidably contacting the slider so that the lid support (16) assists in

opening and closing the lid (See Figure 9) (See Column 4, lines 4 – 7 & Column 4, lines 56 – 58).

Regarding claim 12, Envall discloses the invention substantially as claimed. However, Envall does not disclose the first portion having the enlarged structure and the second portion having the catch.

Wooten, Jr., teaches the first portion having the enlarged structure (6) (See Figures 1, 3 & 4) and the second portion having the catch (14) (See Figures 1, 3 – 5) for the purpose of providing multi-functional capabilities.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the first portion having the enlarged structure and the second portion having the catch as taught by Wooten, Jr. with the car top carrier of Envall in order to enhance multi-functional capabilities.

Regarding claim 13, Envall discloses the invention substantially as claimed. However, Envall does not disclose the first portion having the catch and the second portion having the enlarged portion.

Wooten, Jr., teaches the first portion having the enlarged structure (6) (See Figures 1, 3 & 4) and the second portion having the catch (14) (See Figures 1, 3 – 5) for the purpose of providing multi-functional capabilities.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the first portion having the catch and the second portion

having the enlarge portion, since it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art. *In re Einstein*, 8 USPQ 167.

Regarding claim 14, Envall discloses the invention substantially as claimed. However, Envall does not disclose the second portion having the receptacle with the flared lip allowing limited amount of hinge rotation.

Wooten, Jr., teaches the second portion (11) having the receptacle (See Figure 1) with the flared lip (See Figure 1) allowing limited amount of hinge (1) rotation (See Column 2, lines 3 – 9) for the purpose of providing multi-functional capabilities.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the second portion having the receptacle with the flared lip allowing limited amount of hinge rotation as taught by Wooten, Jr., with the car top carrier of Envall in order to enhance multi-functional capabilities.

Regarding claim 17, Envall discloses the invention substantially as claimed. However, Envall does not disclose the first and second portions configured to permit relative rotation around at least two axes.

Wooten, Jr., teaches the first (4) and second (8) portions configured to permit relative rotation around at least two axes (See Figures 1 – 5) for the purpose of providing multi-functional capabilities.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the first and second portions configured to permit relative rotation around at least two axes as taught by Wooten, Jr., with the car top carrier of Envall in order to enhance multi-functional capabilities.

7. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Envall (U. S. Patent number 5582313), Wooten, Jr. (U.S. Patent Number 3008177) and Zupancic et al., (U.S. Patent Number 6296278) as applied to claim 17 above, and further in view of Van der Feen et al., (U.S. Patent Number 6296161 B1). Envall discloses the invention substantially as claimed.

However, Envall does not disclose the clamp device including at least one cam lever positioned inside the box for opening and closing the clamp device securely around the cross bar.

Van der Feen et al., teaches the clamp device includes at least one cam lever (20) positioned inside the box (1) for opening and closing the clamp device (13) securely around the crossbar (3) (See Figure 1 – 8) for the purpose of providing adequate anchoring security.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the clamp device including at least one cam lever positioned inside the box for opening and closing the clamp device securely around the cross bar as taught by Van der Feen et al., with the car top carrier of Envall in order to enhance adequate anchoring security.

Response to Arguments

8. Applicant's arguments with respect to claims 1 – 14, 17 - 18 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

9. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06 II(A), MPEP 2163.06 and MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lester L. Vanterpool whose telephone number is 571-

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272-8028. The examiner can normally be reached on Monday - Friday (8:30 - 5:00) EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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